IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Writ Petition No. 612 (S/B) of 2001
Old Number
Writ Petition No. 432 of 1989

1. Sri Mahfuzul Qamar, son of Sri Masood Ahmad, resident of Village Majra, District – Dehradun.
2. Sri Bhagwat Singh, son of Sri Ram Singh, resident of Village Nijumla, Post – Gari, District – Chamoli.

……Petitioners

Versus

1. State of U.P. through the Secretary, Department of Small and Rural Industries, Uttar Pradesh Shashan, Vidhan Sabha Bahwan, Lucknow.
2. Udyog Director and Controller, Office of Director of Industries, U.P., Kanpur.
3. Additional Director of Industries, Garhwal Division, Pauri Garhwal.
4. The General Manager, District Industries Centre, Dehradun.

……Respondents

Hon'ble M.M. Ghildiyal, J.

Heard Sri Rahul Kansal, holding brief of Sri N.S. Pundir, learned counsel for the petitioner, at length, and learned standing counsel for respondents.

By means of this writ petition, the petitioners have prayed for the following reliefs:

(a) Issue an appropriate writ, order or direction in the nature of Certiorari, calling for impugned order of termination of the petitioners' service dated 07.12.1988 passed by respondent no. 3, passed by respondent no. 3, as contained in Annexure 16 and quash the same;

(b) Issue an appropriate writ, order or direction in the nature of Mandamus, commanding the respondents no. 1 to 4 to allow the petitioners to resume his duties forthwith at the

post of Udyog Privekshak, in the office of the Zila Udyogik Kendra, Dehradun, as before.

(c) Issue an appropriate writ, order or direction in the nature of Mandamus, Commanding the respondent nos. 3 and 4 to treat the petitioners in continuous services at the post of Udyogik Parivekshak in the office of the Zila Udyogik Kendra, Dehradun and to pay to them all their so far remaining unpaid pay, allowances and other dues payable for the said post, right from the date of their first joining the said post i.e. 11.01.19888 and 13.01.1988, until the date of their resuming the duties again at the said post and to continue to keep him in service at the said post with all the service benefits admissible under the relevant service rules, as if the impugned order of termination of services had never been passed at all;

(d) issue such other appropriate writ, order or direction, of such nature to the respondents 1 to 4 or any of them, to give to the petitioners such other relief as may be necessary in the facts and circumstances of the case as well as in the interest of justice.

(e) award the costs of this writ petition to the petitioners against respondents no. 1 to 4.

By the impugned order dated 07.12.1988 passed by respondent no. 3 the services of petitioners, who were appointed as Industrial Cooperative Supervisor vide order dated 24.12.1987 passed by respondent no. 3, had been terminated with immediate effect. It is mentioned in the appointment letter that petitioners are appointed on temporary basis.

The services of the petitioners, who were appointed temporarily, are governed by the U.P. Temporary Government Servant (Termination of Services) Rules, 1975. Rule 3 of the

aforesaid Rules specifically states that the services of temporary government can be terminated under these rules after giving one month notice from both side or one month's salary in lieu thereof. From perusal of the termination order it appears that Rule 3 of U.P. Temporary Government Servant (Termination of Services) Rules, 1975 has not been complied with.

The Allahabad High Court on 02.01.1989 passed an order that until further orders, operation of order dated 07.12.1988 by which the services of the petitioners were terminated, shall remain stayed.

About more than 18 years have passed, petitioners are still continuing in the services, Respondents have filed counter affidavit wherein it is stated that appointment of the petitioners was not made by the Competent Authority. Averment made in the counter affidavit does not reflect in the impugned order. Termination order is simpliciter. Respondents have not complied with the Rule 3 of the aforesaid rules before passing impugned order.

I do not find force in the submission of learned standing counsel. Impugned order has been passed illegally and without jurisdiction.

For the reasons recorded above, writ petition is allowed. Order dated 07.12.1988 passed by respondent no. 3 i.e. Additional Director of Industries, Garhwal Division, Pauri Garhwal is quashed. However, it is open for the respondents to pass fresh order in accordance with law, if they choose so. No order as to costs.

(M.M. Ghildiyal, J)

August 05, 2006
SKSharma